

**PUBLIC HEARING DRAFT
CHANGE SHEET #1
OCTOBER 22, 2009**

The following are a list of changes that affect the Public Hearing Draft versions of the Grading and Stormwater Management Revisions (dated August 28, 2009). The page numbers reference the location of the affected sections in the September 24, 2009 Planning Commission staff report. All referenced documents are available on the County Planning's website at <http://www.sloplanning.org>. Click on "Grading and Stormwater Management Revisions" under the "News" heading.

The changes proposed herein are editorial in nature and do not affect the project description considered under the Environmental Impact Report. As such, no affect on the impact analysis is anticipated.

Change 1.1: Clarify that the County Code overrides the Uniform Building Code.

Section Affected: 22.52.040 / 23.05.026

Page: 1-50 (Attachment C, Page 1)

Change:

All grading activities shall be in compliance with the provisions of 1997 Uniform Building Code Appendix Chapter 33, the currently adopted California Building Code, and adopted Appendices, which are hereby adopted and incorporated into this Title by reference as though it were fully set forth herein. In the event of any conflict between the provisions of this Chapter and the Uniform Building Code or California Building Code, this Title shall apply.

Purpose: To clarify that, where there is a conflict between the County Code and the Uniform Building Code, the County Code applies.

Change 1.2: Restore Public Review Draft (July 2009) grading thresholds in the Coastal Zone.

Section Affected: 23.05.030 – Subsection A

Page: 1-51 (Attachment C, Page 2)

Change:

Coastal Zone Land Use Ordinance – Replace Subsection A with the following:

A. Grading. For the purposes of this Chapter, "grading" is defined as all new earthwork that involves one or more of the following activities: excavations, cuts, fills, dams, reservoirs, levees, impoundments, diking, dredging, borrow pits, stockpiling, or compaction of fill. A grading permit is required in any of the following cases:

- 1. 50 cubic yards.** The amount of material, measured cumulatively (adding together all proposed earthwork) for any of the above mentioned activities exceeds 50 cubic yards.

2. Work in a watercourse. The amount of material, measured cumulatively (adding together all proposed earthwork) for any of the above mentioned operations exceeds 20 cubic yards and involves altering or obstructing a drainage way or watercourse.

[Eliminate Figure 5-A and Figure 5-B]

[Renumber Figure 5-C as Figure 5-A]

Purpose: The Public Hearing Draft proposes to align the coastal and inland grading ordinances to three thresholds:

- A trigger at 50 cubic yards, if the grading involves certain other characteristics (e.g. depth of 1 foot, cut slope height of 3 feet, etc.)
- A trigger at 500 cubic yards for all grading, regardless of depth.
- A trigger at 20 cubic yards if the work would alter a drainage way or watercourse.

This proposal would strengthen the inland grading ordinance's thresholds. However, it would also have the unintended consequence of weakening the coastal grading ordinance's thresholds, as grading which exceeds 50 cubic yards would fail to trigger a grading permit if the excavations and fills were less than 1 foot in depth.

This proposed change would restore the Public Review Draft version of the grading thresholds in the Coastal Zone only. This means that grading between 50 and 500 cubic yards would require a grading permit in the Coastal Zone regardless of cut/fill depth.

Change 1.3: Allow Alternative Review in GS and FH.

Section Affected: 22.52.070 / 23.05.032 – Subsection A.1

Page: 1-54 (Attachment C, Page 5)

Change:

1. Grading activities are not exempt within a geologic study area and/or flood hazard combining designations as shown in the Land Use Element. Agricultural grading as provided by Subsection C, Alternative Review as provided by Section 22.52.080¹, and geotechnical/geologic exploration activities are not subject to this limitation.

¹ CZLUO Reference: 23.05.034

Purpose: To allow the use of the Alternative Review program in geologic study and flood hazard combining designations.

Change 1.4: Revise the exemption for grading under approved improvement plans.

Section Affected: 22.52.070 / 23.05.032 – Subsection B.9

Page: 1-56 (Attachment C, Page 7)

Change:

a. Revise language to clarify that only improvements in the public right-of-way are exempt.

9. Improvement plans. ~~Construction of, or Excavations-excavations~~ or fills for roads, drainage, and utilities ~~construction~~ associated with improvement plans for final subdivision maps or public projects within the County-maintained road right-of-way ~~conducted or~~ approved by the County Public Works Department, if consistent with the standards, guidelines and provisions identified in this Chapter, ~~when such work is located outside of any private lot created by the subdivision.~~

b. Delete the separate Coastal Zone Land Use Ordinance version.

~~Coastal Zone Land Use Ordinance – Replace Subsection B.9 as follows:~~

- ~~9. Excavations or fills for construction associated with improvement plans for final subdivision maps or public projects conducted or approved by the County Public Works Department if consistent with the standards, guidelines and provisions identified in this Chapter, when such work is located outside of any private lot created by the subdivision and was authorized as part of a coastal development permit.~~

Purpose: The revisions will clarify that grading on private lots within a subdivision will be processed by grading permits and not included under the subdivision improvement plans. The separate Coastal Zone version of Subsection B.9 is redundant, as Subsections A.4 and A.5 already specify that a coastal development permit must have already been obtained to qualify for exemption from a grading permit.

Change 1.5: Add qualifications to the exemption for exploratory excavation and utilities in the Coastal Zone.

Section Affected: 23.05.032 – Subsection B.10

Page: 1-57 (Attachment C, Page 8)

Change:

a. Specify that the exemption for exploratory excavation and utilities does not apply in the Archaeologically Sensitive combining designation.

~~Coastal Zone Land Use Ordinance – Replace Subsection B.10.a as follows:~~

- ~~a. Excavation or fill shall not result in impacts to archaeological resources or the removal of trees or native riparian or wetland vegetation, or rare, threatened or endangered species. After consultation with the Environmental Coordinator, on-site monitoring may be required. This exemption shall not apply within an archaeologically sensitive area as shown in the Land Use Element.~~

b. Specify that the exemption for exploratory excavation and utilities does not apply when services will be extended beyond the urban services line.

Coastal Zone Land Use Ordinance – Add Subsection B.10.g as follows:

- g. This exemption shall not apply to the extension of water or sewage service outside of an urban services line, as shown in the Land Use Element.

Purpose: The existing Coastal Zone Land Use Ordinance specifies that exploratory excavations and trenching for utilities are exempt from grading permits, except in certain circumstances. Those limitations include projects located in appealable areas, projects located in archaeologically sensitive areas, and projects which would extend utilities outside of the urban services line. Projects in appealable areas are already precluded from qualifying for the exemption by Section 23.05.032.a.(4). Projects in archaeologically sensitive areas and projects which would extend utilities beyond the urban services line, however, were inadvertently excluded. This change would restore those provisions.

Change 1.6: Revise the ongoing crop production and grazing exemption and the repair and maintenance exemption.

Sections Affected: 22.52.070 / 23.05.032 – Subsection B.11 and B.12

Page: 1-57 (Attachment C, Page 8)

Change:

a. Differentiate between crop production and grazing.

11. **Ongoing crop production and grazing.** Grading for the ongoing production of food and fiber, the growing of plants, and the ~~raising and keeping of livestock~~management of rangeland shall be exempt when all of the following are true:

- a. ~~For grading activities related to crop production, the~~ The proposed grading activities are is limited to preparing a field for a crops ~~improvement~~, on land that has been previously cultivated ~~within the previous five years; or range improvement, on existing rangeland.~~ Cultivation shall include the following practices: disking, harrowing, raking or chiseling, planting, plowing, seeding, or other tilling.
- b. For grading activities related to range management for commercial livestock production, the grading is limited to the following activities: vegetation management, such as reseeding or vegetation modification; or livestock watering systems other than ponds or reservoirs.
- ~~b. For at least one of the preceding five years, the land to be graded has been subject to agricultural practices. These practices include, but are not limited to, active fallowing, grazing, irrigation of pastures, crop production, cultivation, disking, harrowing, raking or chiseling, planting, plowing, seeding, or other tilling.~~

b. Allow soil fertility amendments under this exemption.

- c. All site work shall be balanced. No importation or exportation of fill material from/to off-site parcels shall occur. The incorporation of soil fertility amendments to enhance crop production or rangeland fertility is permissible under this exemption. Soil fertility amendments include materials described in the California Food and Agricultural Code Sections 14511 et seq.

c. Provide additional clarification on the two-foot depth limitation.

- e. The site work does not involve ~~tilling or ripping deeper~~ the excavation, fill, or other movement of soil deeper than two feet on slopes identified by the Natural Resources Conservation Service (NRCS) as having a high or very high erosion hazard rating.

d. Allow repair and maintenance of all agricultural water lines, rather than just irrigation lines.

12. **Routine maintenance.** Routine maintenance of legally established existing (exempt or previously permitted) roads; man-made, engineered flood control channels or levees; existing agricultural drainage channels; ~~irrigation~~ agricultural water lines; and public utility lines (as provided by Subsection B.10); where the width, length, or design capacity is not increased.

Purpose: The above changes address comments received by the Agricultural Commissioner's Office and the Agricultural Liaison Advisory Board. The changes are intended to avoid exempting intensive grading on sites that do not have a history of intensive cultivation. This would instead need to proceed as agricultural grading subject to Subsection C. Additionally, the change to routine maintenance provisions would allow water lines serving livestock operations to be repaired/maintained under this exemption.

Change 1.7: Correct the reference to the Field Office Technical Guide

Section Affected: 22.52.070 / 23.05.032 – Subsection C.1.b

Page: 1-58 (Attachment C, Page 9)

Change:

- b. Agricultural grading shall employ sound agricultural management measures and practices of the USDA Natural Resources Conservation Service (NRCS) and the UC Cooperative Extension. These practices shall not adversely affect slope stability, or groundwater recharge. Additionally these practices shall prevent off-site drainage and erosion and sedimentation impacts. All agricultural grading, whether requiring a permit or exempt, shall be consistent with the standards and practices contained in the NRCS Field ~~Operations Office~~ Technical Guide (FOTG).

Purpose: Correct an inaccurate reference to the Field Office Technical Guide.

Change 1.8: Edit agricultural grading text for clarity and to reduce redundancy.

Section Affected: 22.52.070 / 23.05.032 – Subsection C.2

Page: 1-58 (Attachment C, Page 9)

Change:

a. Remove redundant language under “crop production.”

- a. **Crop production.** Grading to prepare new land for crop production on slopes with a natural gradient less than twenty percent where no off-site fill is proposed. ~~Commercial soil amendments/compost imported for the express purpose of production agriculture are allowed under this exemption. For new field preparation on slopes between twenty and thirty percent,~~

~~the alternative review process shall be used in compliance with Section 22.52.080² or a grading permit in compliance with Section 22.52.050³ shall be issued.~~

b. Allow water pipelines for all agricultural uses.

- b. **Water pipelines.** Installation of water pipelines to serve agricultural ~~fields or livestock uses~~. Water pipelines shall be installed under proper practices recognized by the Natural Resources Conservation Service.

Purpose: To comply with recommendations of the Agricultural Commissioner's office. Language regarding crop production on slopes in excess of 20 percent is unnecessary as this is already covered in the section describing the alternative review program. Importing soil amendment is now proposed to be covered under the ongoing crop production and grazing exemption. Broadening the water pipelines exemption will allow other agricultural uses of water lines (beyond fields and livestock) to qualify as agricultural grading.

Change 1.9: Clarify the Agricultural Commissioner's role in reviewing agricultural roads.

Section Affected: 22.52.080 / 23.05.034 – Subsections A.5 and B.3

Page: 1-60 (Attachment C, Page 11)

Change:

a. Add a provision to allow the Agricultural Commissioner to consider length, width, etc. in determining appropriateness of a road (Subsection A.5).

5. For projects involving roads or ponds, the Agricultural Commissioner's office shall make a written determination that the extent of the existing agricultural use or a proposed agricultural use of the property justifies the need for the road or pond. The Agricultural Commissioner may consider such features as length, width, capacity, and extent of the proposed road or pond in determining whether it is justified.

b. Add clarification that the agricultural road width is to be consistent with the Agricultural Commissioner's determination (Subsection B.3).

3. **New agricultural roads.** New roads providing access to farm fields, pastures, water supplies, outdoor equipment or supply storage areas, livestock grazing areas, fence lines, or an agricultural structure which does not require a county building permit (agricultural exempt structure). New roads shall be the minimum width necessary for the planned agricultural use, consistent with the determination made under Subsection A.5. The road shall not supply access to a habitable structure. Ford crossings (i.e. "Arizona" crossings), as determined to be appropriate by the Agricultural Commissioner, may be included in the construction of new agricultural roads.

Purpose: To clarify the role of the Agricultural Commissioner in considering the appropriateness of agricultural roads, and to reinforce the requirement that roads be the minimum width necessary for the agricultural use.

² CZLUO reference: 23.05.034

³ CZLUO reference: 23.05.028

Change 1.10: Clarify that Alternative Review acts as a Plot Plan.

Section Affected: 23.05.034 – Subsection A.6

Page: 1-60 (Attachment C, Page 11)

Change:

6. Where an application for Alternative Review proposes a project that is not otherwise subject to land use permit requirements of Chapters 23.03 or 23.08 or other applicable sections of this Title, approval of an Alternative Review Form by the Director certifies that the proposed project will satisfy applicable provisions of this Title. In these circumstances approval of an Alternative Review Form functions as a Plot Plan (pursuant to Section 23.02.030), and thereby constitutes approval of a Coastal Development Permit. Where ~~a~~ an Alternative Review project is appealable to the Coastal Commission pursuant to Section 23.01.043, Minor Use Permit approval is also required as set forth in Section 23.02.033.

Purpose: To clarify that the Director's authorization for a project to proceed under Alternative Review is equivalent to the Director's approval of a Plot Plan.

Change 1.11: Refer to Title 19 for permit extensions.

Section Affected: 22.52.090F.2.a.(2)

Page: 1-70 (Attachment C, Page 21)

Change:

- (1) An extension has been granted as set forth in ~~this~~ Section 19.02.020f of the Building and Construction Ordinance.

Purpose: To refer back to Title 19 (Building and Construction Ordinance) for the procedure for permit extension. A separate procedure for permit extensions was not proposed as part of the ordinance revisions.

Change 1.12: Modify enforcement provisions

Section Affected: 22.52.190 / 23.05.056 – Subsections D.6, E, F

Page: 1-115 and 1-116 (Attachment C, Pages 66 and 67)

Change:

a. Delete Subsection D.6

- ~~6. Section 309 of the Clean Water Act provides significant penalties for any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Clean Water Act or any permit condition or limitation implementing any such section in a permit issued under Section 402. Any person who violates any permit conditions of the General Construction Permit is subject to a civil penalty not to exceed twenty-seven thousand five hundred dollars (\$27,500) per calendar day of such violation, as well as any other appropriate sanction provided by Section 309 of the CWA. The Porter Cologne Water Quality Control Act also provides for civil and criminal penalties which in some cases are greater than those under the Clean Water Act.~~

b. Renumber Subsection E.1 as Subsection E.4; delete Subsection E.2

- ~~1.4. Any party found to be in violation of Sections 22.10.155, 22.52.130, or 22.52.150D⁴ in such a manner that poses or threatens to pose a significant danger to the environment or public health and safety, may have its name published in the largest daily newspaper in the San Luis Obispo area.~~
- ~~2. Any person who violates any order issued by the County for violation of the provisions of this Chapter regulating or prohibiting discharge of both stormwater and non-stormwater, and which causes, or threatens to cause, pollutants to enter the County's stormwater conveyance system may be liable civilly in a sum not to exceed the amount that the County may be fined by the State Water Resources Control Board (SWRCB) or Regional Water Quality Control Board (RWQCB), or the amount of any civil liability imposed on the County for non-compliance with the SWRCB permits.~~

c. Add new Subsections E.1 through E.3

1. Any person who violates any provision of this Chapter or who violates any stop work order or notice may also be in violation of the Federal Clean Water Act and/or the State Porter-Cologne Act and may be subject to prosecution under those Acts, including civil and criminal penalties. Section 309 of the Clean Water Act provides significant penalties for any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Clean Water Act or any permit condition or limitation implementing any such section in a permit issued under Section 402. Any person who violates any permit conditions of the General Construction Permit is subject to a civil penalty not to exceed twenty-seven thousand five hundred dollars (\$27,500) per calendar day of such violation, as well as any other appropriate sanction provided by the Clean Water Act. The Porter-Cologne Water Quality Control Act also provides for civil and criminal penalties which in some cases are greater than those under the Clean Water Act. Any enforcement actions authorized under this Chapter may also include notice to the violator of such potential liability.
2. Any person who knowingly makes any false material statement, representation, or certification in any record or other document submitted or required to be maintained by this Chapter or the General Construction Permit is subject to civil or criminal action. This may include prosecution for violation of Section 309(c)(4) of the Clean Water Act which provides for a fine of not more than ten thousand dollars (\$10,000), or by imprisonment for not more than two years, or both.
3. Any person who violates any order issued by the County for violation of the provisions of this Chapter regulating or prohibiting discharge of both stormwater and non-stormwater, and which causes, or threatens to cause, pollutants to enter the County's stormwater conveyance system shall be liable for such amounts that the County may be fined by the State Water Resources Control Board (SWRCB) or Regional Water Quality Control Board (RWQCB), or the amount of any civil liability imposed on the County for non-compliance with the SWRCB permits.

d. Add new Subsection F

- F. Remedies not exclusive.** The remedies identified in this Chapter are in addition to and do not supercede or limit any other remedies, including administrative, civil and/or criminal remedies pursuant to federal, state, and local law. The remedies provided in this Chapter shall be cumulative and not exclusive.

⁴ CZLUO References: Sections 23.04.450, 23.05.044, and 23.05.048.d.

Purpose: These changes are proposed at the request of County Counsel. The previous wording could be interpreted to suggest that the County might pursue prosecution under the Clean Water Act. Because the County lacks that authority, this provision has been re-worded as a disclosure to violators that they may be prosecuted under the Clean Water Act. Such prosecution would likely be pursued by the Regional Water Quality Control Board or Federal Bureau of Investigation.

A new subsection is further proposed to clarify that remedies are cumulative and not exclusive. This is necessary because the ordinance specifies that fines are “not to exceed” certain values. In circumstances where a violator is fined multiple fines, this clarifies that the fines are cumulative. For example, a violator who is fined \$20,000 federally for a Clean Water Act violation is still subject to a civil fine of \$25,000. The County would not be limited to pursuing a fine of only \$5,000 (i.e. the difference between \$20,000 and the “not to exceed” amount of \$25,000) as these fines are exclusive of one another.

Change 1.13: Correct an error in the definition for “storm event.”

Section Affected: Chapter 22.80 / Chapter 23.11

Page: 1-119 (Attachment E, Page 2)

Change:

| **Storm Event** - A rainfall event that produces more than 0.1 inch of precipitation and ~~that~~, which is separated from the previous storm event by at least 72 hours of dry weather.

Purpose: To correct a grammatical error in the text of the definition.